IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3972 OF 2006

Smt.Jayashree Balwant Vanjari .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.V.V.Purwant for applicant

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st November 2006.

P.C.

. Applicant has been arrested in connection with C.R.No.133 of 2005 registered with Baramati police station.

2. It is true that the applicant had applied for anticipatory bail and her application was rejected by the Additional Sessions Judge, Baramati. Thereafter, the applicant sought relief from this Court which was denied and ultimately surrendered to custody. She had applied for bail during the course of investigations which application was also rejected. She approached this Court and I had permitted her to withdraw the application with liberty to approach the trial court after investigations are complete and charge sheet is filed.

3. After the investigations were complete and charge sheet is filed, she applied for bail before the learned Sessions Judge, Baramati. Learned Judge has rejected the said application on 11th October 2006 and that is how the applicant is before me.

4. Mr.Purwant appearing for applicant submits that applicant has been arrested on 14th August 2006. The applicant is charged with commission of offences which are essentially in the nature of instigating the co-accused to commit offence of rape as also kidnapping the prosecutrix from the lawful custody of her mother with an intention to force her to have illicit intercourse. He submits that the other offences as far as the present applicant is concerned are under the Bombay Money Lenders Act.

5. Applicant had in no way kidnapped the prosecutrix but the on her own came to her place and resided with her. She has been so residing from 2002. During all this period the prosecutrix did not complain of any act much less any assault or harassment so also ill-treatment at the hands of applicant. Applicant’s cousin brother Vinod and the prosecutrix were known to

each other. The entire act of luring her and taking her to places so also committing rape on her are alleged insofar as co-accused Vinod and absconding accused Phiroze Shaikh. Mr.Purwant submits that assuming without admitting that the offence alleged is of instigating co-accused and for such offence when investigations are complete and charge sheet is filed, there is no need for further investigation. He submits that the apprehension expressed in the order of trial court can be taken care of and the applicant is ready and willing to reside outside Baramati and shall stay at Pune.

6. Mr.Pednekar, learned A.P.P. invites my attention to the statement of the prosecutrix wherein she is categorically charged the applicant for luring her into the relationship and thereby instigating co-accused. He submits that the prosecutrix was vulnerable. She comes from a poor family and had to support the

parents. In such circumstances, taking advantage of her situation, the applicant lured her into illegal and immoral acts and the prosecutrix was compelled to continue the same on account of poverty. She had a loan which she had to repay to the applicant. This is a case where the applicant has taken advantage of the vulnerability of the prosecutrix and perpetuated her heinous acts. She is a money lender and, therefore, no mercy be shown to her even if she is a woman accused.

7. I have considered the application not just from the point of view of the discretion conferred upon this Court to enlarge a woman accused but having regard to the allegations against her as well. Prima facie, offence of rape insofar as the prosecutrix is concerned, is committed by the cousin of applicant Vinod and the absconding accused Phiroze. Applicant having allowed the prosecutrix to stay at her place may

have taken advantage of her helplessness and advanced monies which were repayable with interest. Harassment by the applicant of the prosecutrix prima facie, appears to be on account of debt and interest having not been paid on time. That apart, she has at the most instigated co-accused. Learned Judge is aware of the fact that the applicant could be punished for such act but proceeded to reject the application mainly on the ground that the applicant would, along with her hirelings and relations, threaten the prosecutrix and other witnesses.

8. In my view, the above apprehension of the prosecution can be taken care of by imposing stringent conditions. Mr.Purwant also makes a statement that the applicant is willing to write off the loan and shall not take any steps to recover the amount of interest as also the principal. In these circumstances, the following order would sub-serve the ends of justice.

9. Hence, following order:-

i) The applicant arrested in connection with C.R.No.133 of 2005 registered with Baramati Police Station shall be enlarged on bail in the sum of Rs.25,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer of the nearest Police station to her place in Pune once a week on every Saturday between 5.00 p.m. and 7.00 p.m. till the conclusion of trial. Applicant shall reside at Pune and shall not enter Baramati except only for attending trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for

expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.Dharmadhikari, J).